IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

M.FA.No. 1427 of 1996()

OPMV.1110/1993 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PUNALUR

APPELLANT: 2ND RESPODNENT

THE BRANCH MANAGER , THE ORIENTAL INSURANCE CO.LTD KOTTARAKKARA NOW REPRESENTED BY ITS ADMINISTRATIVE OFFICER, M.T.P.C.C, M.G. ROAD, KOCHI-35

BY ADV. SRI.MATHEWS JACOB

RESPONDENTS: PETITIONER AND 1ST RESPODNOENT

1. **VELAPPAN NAIR, S/O SANKARAN NAIR, ARAPPURA VEEDU, KULAKKADA VILLAGE, MAVADY P.O KOTTARAKKARA**

2. **Y. JOY, S/O YOHANNAN, EDAKUNNIL VEEDU, KALAYAPURAM P.O, KOTTARAKKARA**

BY ADV. SRI.V.N.ACHUTHA KURUP
SRI.G.CHANDRASEKHARAN
SRI.B.S.SWATHY KUMAR
SRI.V.R.REJITHKUMAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 30/07/2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.FA.No. 1427 of 1996()

ORDER IN C.M.P NO. 5026 OF 1996 IN M.F.A NO. 1427 OF 1996

DISMISSED

30-07-2007 **SD/-**
K.PADMANABHAN NAIR, JUDGE

K.PADMANABHAN NAIR, J.

M.F.A No. 1427 of 1996

Dated this the 30th day of July 2007

JUDGMENT

The 2nd respondent insurer in O.P(MV) 1110 of 1993 on the file of Motor Accidents Claims Tribunal, Punalur is the appellant. The appeal is filed against an award passed by the Tribunal by which the appellant was directed to deposit the compensation of Rs. 21,850/- awarded in this case.

2. The short facts necessary for the disposal of the appeal are as follows: The 1st respondent filed an application claiming compensation alleging that at 10 A.M. on 29-07-1988, while he was returning home from the Kalayapuram public market he sustained injuries in a motor vehicle accident involving a jeep No. KLU-8635 It was averred that due to the accident he underwent treatment for about 1 ½ months and a lot of money was spent for the treatment. So the 1st respondent claimed an amount of Rs. 1,00,000/- as compensation The 2nd respondent admitted the ownership of the vehicle. It was contended that the vehicle was covered by a valid policy of insurance issued by the appellant. It was also contended that the driver of the vehicle was holding a valid driving licence and as such the insurer was liable to pay the compensation if any awarded. It was contended that there was no negligence on the part of the 1st respondent and the accident occurred due to the negligence of the

2nd respondent himself. The 2nd respondent also contended that there was no negligence on his part and the accident occurred due to the negligence of the 1st respondent. It was further contended by the appellant that the policy of insurance was issued only at 1 P.M on 29-07-1988, limiting the liability to Rs. 50,000/- and the accident in this case had occurred at 10 A.M on 29-07-1988 and there was no valid policy at the time of the accident and hence it is not liable to pay the compensation. The Tribunal had found that the accident occurred due to the negligence of 2nd respondent. The Tribunal also found that the 1st respondent was entitled to get a compensation of Rs. 21,850/-. The Tribunal found that Ext.B1 policy was a renewal policy. So even though the policy was issued at 1 P.M i.e after the accident occurred, that will cover the accident already occurred and directed the insurer to pay the compensation. Challenging that award this appeal is filed.

3. The evidence adduced by the 1st respondent shows that the accident occurred due to the negligence of the 2nd respondent - owner-cum-driver. I have carefully gone through the quantum of compensation awarded under various heads. I do not find any reason to interfere with the quantum of compensation awarded. So the only point arising for consideration is whether the award of the Tribunal making the appellant liable for the compensation is legal and proper. The fact that the accident

occurred at 10.A.M. on 29-07-1988 is not disputed. Ext.B1 policy certificate shows that it will take effect only from 1 P.M. on 29-07-1988. In **George P.Varghese Vs.Daniel (1998 (1) KLT 42)** a Division Bench of this court held that on the strength of a policy issued after occurrence of the accident the insurance company cannot be made liable as it will amounts to suppression of material fact. There is absolutely nothing on record to show that the 2nd respondent-owner cum driver informed the insurer that the vehicle was involved in a road traffic accident at 10 A.M. while he renewed the policy at 1 P.M. So there was suppression of material facts and as such the insurer cannot be made liable for the payment and that part of the award is to be set aside. The learned counsel appearing for the appellant submits that in pursuance of an interim order passed by this Court the appellant had deposited an amount of Rs. 5,000/- before the Tribunal. If that amount is already withdrawn by the 1st respondent the appellant can recover that amount also from the 2nd respondent-owner cum driver. If that amount is not released to the 1st respondent-claimant, the same will be refunded to the appellant. The 1st respondent-claimant can realise the amount from the 2nd respondent by executing this award.

In the result the appeal is allowed in part. That part of the award by which the appellant is made liable for the compensation of an amount of

Rs. 21,850/- is hereby set aside. The 1st respondent (petitioner in the original petition) is allowed to recover the amount from the 2nd respondent-owner cum driver by executing this award.

C.M.P No. 5026 of 1996 will stand dismissed.

K.PADMANABHAN NAIR,JUDGE

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